



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 24 2004

4APT-APB

Michael Cooke, Director
Division of Air Resource Management
Florida Department of Environmental
Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Mr. Cooke:

This correspondence is being sent to provide you with an official final copy of the Environmental Protection Agency (EPA) Region 4 report, which was completed as a result of the EPA Title V and New Source Review (NSR) program evaluation conducted on March 29-April 1, 2004 (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Florida Department of Environmental Protection (FDEP) to carry out the duties and responsibilities required to effectively run the Title V and NSR programs, as well as find out how EPA can best assist the Bureau in meeting these commitments.

I would like to thank you and your staff for your cooperation throughout the evaluation. Your staff responded to the questionnaires and provided all requested material in a timely and professional manner. In addition, I commend you on the performance of both of these programs. Both programs are operating at a very high level of proficiency. These programs are important tools to implement measures protecting air quality for the citizens of Florida. We appreciate your efforts to ensure that Florida has effective air programs

If you or your staff have any questions regarding the report, please do not hesitate to contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division

Enclosure

Florida Department of Environmental Protection Title V and New Source Review Program Review

The U.S. Environmental Protection Agency (EPA) Region 4 committed to conduct detailed title V and New Source Review (NSR) program reviews for all state and local programs that had at least ten title V major sources within their jurisdiction. These evaluations also include a review of the title V fees collected and billed annually. This commitment is the end result of an agreement between the EPA Office of Air and Radiation and the EPA Office of Inspector General which required EPA to conduct title V program evaluations of all state and local programs that had at least ten title V major sources. EPA Region 4 decided, in addition to title V, to use this opportunity to also evaluate the NSR programs at each of the state and local programs. The program reviews are to be completed by the end of Fiscal Year 2006. The Florida Department of Environmental Protection (FDEP) program review was conducted the week of March 29 through April 1, 2004 in Tallahassee, Florida. Prior to arrival at the Florida State office, EPA emailed a list of ten title V sources to FDEP that EPA planned to review as part of the overall program review. Upon EPA's arrival in Tallahassee, Florida, EPA spent the afternoon of the first day reviewing the permit files. The following morning, an entrance interview was conducted between EPA and key staff of the FDEP explaining the program areas Region 4 would be inquiring into during the review. The following parties attended the initial meeting: Randy Terry (EPA Region 4), Kathleen Forney (EPA Region 4), Gracy Danois (EPA Region 4), Jim Pennington (FDEP), Al Linero (FDEP), and Scott Sheplak (FDEP).

In Florida, the NSR program is located in the Tallahassee office and the title V program is primarily located in the Tallahassee office. However, FDEP has six district offices that also issue and enforce title V permits. FDEP has contracts in place with 8 local programs that perform title V work. Five of these programs perform compliance, enforcement and permitting activities and three of these programs are limited to performing compliance and enforcement activities.

Florida Title V Program Review

1. Program Review

Note - the headings in this section duplicate the headings in the title V program review questionnaire administered during the visit.

A. Title V Permit Preparation and Content

FDEP began to receive permit applications in 1996 and completed issuance for 100 percent of the initial title V sources prior to 2001. Florida was the first state in the country to issue all of their initial title V permits. The FDEP noted that less than ten percent of initial permit applications lacked the necessary information to adequately develop the final title V permit. In no instances did FDEP need to obtain any updated applications due to failure to meet the prescribed deadlines for processing applications. However, FDEP has noticed that most renewal applications have needed additional information to be complete. The majority of those applications which were incomplete required Compliance Assurance Monitoring (CAM) plans to be submitted. Another issue being addressed during the renewal stage is that information is being submitted on old acid rain forms instead of the correct permit application forms. In order to ensure compliance, with the title V permit terms, prior to each initial permit being issued, the Tallahassee office of FDEP mailed a confirmation request in the form of a memo to the compliance authority for verification. FDEP is currently in the process of verifying compliance electronically on all renewals. Where it is determined that a facility is out of compliance, the FDEP includes specific milestones and dates in the permit to return the facility to compliance.

In order to adequately prepare their permit staff, FDEP has held numerous training sessions for their permit writers. They have created permitting formats, standardized permitting language, and other process improvements such as the Permitting Action Tree (PAT). The PAT is a permitting tool developed by FDEP to be used by their staff to assist in determining the appropriate action needed to address any permitting issues. The PAT is continuously updated as new issues arise. To further ensure a solid foundation regarding application submittal and permits processing, FDEP has held eight implementation workshops on title V. The initial four sessions were held for industry and four additional sessions were held for FDEP staff. During the initial round of title V permit issuance, 100 percent of draft permits issued by the district and local offices were reviewed by the State office prior to public notice. For renewals, the State office reviewed the first five permits issued, in addition to all permits written by new permit writers. These reviews were included in order to ensure the quality and consistency of each of the permits issued by the Bureau. EPA Region 4 staff also reviews specific draft permits based upon the criteria agreed to annually between EPA Region 4 and FDEP.

The FDEP, through the use of the title V permit program, has consolidated all applicable requirements into one document. To the extent possible, permit writers clearly specify each applicable requirement in its entirety within the permit. In addition, FDEP has created a title V permitting format that allows for the grouping of similar emission units by using common

conditions. Use of this permitting format streamlines multiple requirements for the same emission unit to reduce redundancy of requirements. Also, FDEP has created standardized attachments for use with all title V permits. The FDEP believes that the creation of the standardized permits and attachments has helped to ensure consistency for the regulated community and the agency throughout the State.

FDEP works to ensure that each statement of basis explains the rationale for monitoring as well as applicability decisions and any exemptions. In order to ensure consistency in developing the statement of basis, the Tallahassee office conducts monthly permit calls with the district and local offices. Finally, FDEP has requested additional guidance from EPA on how to adequately prepare statements of basis and EPA Region 4 has agreed to provide this guidance as soon as it becomes available.

B. General Permits

FDEP has taken great initiative in regulating over 1000 area sources and employs the use of general permits to achieve this goal. Under Florida's title V general permit program, the owner or operator of an eligible facility is authorized to operate pursuant to Chapter 62-213, Florida Administrative Code, F. A. C., beginning 30 days after giving notice to the department. A title V general permit is issued by rule and entitlement to use that permit depends upon compliance with terms and conditions in the rule. According to the title V general permit rule, "entitlement to use" is not transferable and a demonstration of "entitlement to use" must be made every five years. The governing statute specifies only a single title V general permit per facility. The general permits are permits-by-rule which only cover a single specific operation (not including insignificant activities). If a facility has multiple operations, any of which would subject it to title V, it is required to obtain an individual title V permit. Seventy-two percent of Florida's title V sources have a general permit. Florida's general permits must follow the requirements outlined within the Florida regulations. These regulations can be found on the FDEP website at <http://dep.state.fl.us/air/permitting.htm>. FDEP uses this website to keep the public or regulated community apprised of which general permits have been written and issued as a "permit by rule." Each general permit goes through the complete title V process (i.e., draft, proposed, and final). Rulemaking notices are published in newspapers across the State, which trigger 30 day comment periods. Upon request, FDEP provides information regarding facilities authorized to operate under the title V general permit program. The general permit's five year expiration date begins 30 days after the department receives a current and complete registration form. If a facility continues to meet the eligibility criteria specified in the rule, it may continue to operate for additional five year periods by submitting subsequent registration forms.

C. Monitoring

In order to ensure that its title V permits contain adequate monitoring, FDEP has created title V application forms that require CAM plans to be submitted as attachments, if applicable. Additionally, the Florida State Implementation Plan (SIP) contains monitoring requirements that are incorporated in the permits. FDEP has developed a guidance document (DARM-OGG-03) to be used on how monitoring is selected for permits. In order to ensure that permits contain

adequately written monitoring conditions, FDEP, in conjunction with EPA, provided a special training session on CAM on March 5, 2004 and has provided a "permit writers notebook" to each district and local office. Initially, Jonathan Holton was processing all of the CAM applications throughout the Tallahassee office. Since the training session, the district and locals are processing the applications with Jonathan assisting on five to ten percent of the permits. Additional training is provided at FDEP's annual air meeting, at permit writers' workshops and on monthly teleconferences. During the initial round of permit issuance, FDEP generally added additional monitoring only upon EPA's insistence; however, during the renewal stage, additional monitoring is added on a case-by-case basis.

The overall effect of including the monitoring requirements (including CAM) in FDEP permits has been better source compliance. EPA provided assistance by reviewing and providing comments on the standardized CAM permit language and approach. This assistance led to a simplified implementation of CAM for FDEP.

D. Public Participation and Affected State Review

FDEP does not publish any notices of draft title V permits. In Florida, it is the permittee's responsibility to publish the public notice at their expense. The average cost of a public notice is three hundred dollars (\$300.00). Permittees are required to publish the public notice in a newspaper of general circulation in the affected area and to clearly cite the beginning and end of the public comment period. Florida Chapters 62-613, 210, and 110, Florida Air Code (F.A.C.) contain the specific requirements on publication. FDEP does utilize the internet as a means for notifying the public of permits, but does not consider this the official method of notifying the public. In addition, FDEP maintains a mailing list for each project which is used to notify persons interested in the title V permit. Anyone interested in being on this mailing list can submit a written request to be included free of charge. Persons on the mailing list will receive the complete permitting package, which includes the intent to issue, the public notice, and the draft, proposed, and final title V permits. FDEP currently has no statutory requirements to reach out to any specific communities beyond the standard public notification process. FDEP does not provide notices in any language other than English.

On the occasions that FDEP has been asked by the public to extend the public comment period, they have granted the extensions. These extensions typically last less than thirty days. FDEP has received public comments on approximately five percent of the permits issued throughout the State and have not changed any of their permits due to public comments. Over the years, FDEP has noticed a decrease in the number of public comments submitted on title V permits. They believe this is attributable to the public obtaining a better understanding of the process. However, FDEP has noticed that some utilities have become a focal point for the public during the renewal process. Additionally, FDEP has noticed the number of comments received via e-mail has increased considerably. FDEP has not noticed any specific communities, such as environmental justice communities, being active in commenting on title V permits. In the event that a permit receives comments that result in a substantial change to the draft permit, then that permit would have to be renoticed. FDEP defines a substantial change as a relocation or modification of the activity or project that is reasonably expected to cause new or significantly

greater adverse environmental impact. In order to ensure quality permits, FDEP works with the permittees prior to public noticing the permit. FDEP has noticed no consistent trends in the types of comments they receive on permits and has found that permits can generally be issued in a timely manner. Numerous comments on a title V permit or comments on an NSR permit processed in conjunction with a title V permit are the two main issues which can significantly slow down the issuance of a title V permit.

FDEP holds public meetings on permits when they receive timely requests. These requests are evaluated on a case-by-case basis; however, FDEP recalls no instance in which a timely request for a public meeting has been denied. Any person requesting copies of permit-related documents, who is not on the mailing list, is charged a copying fee of fifteen cents (\$0.15) per page. Exceptions to this policy include persons living in the affected area, small requests and any requests that can be handled electronically. The costs to FDEP of these exceptions are covered under a separate Florida statute that governs public records. In order to obtain any permit-related information, the public may contact the appropriate compliance or permitting agency office (Tallahassee, district or local). All records are available for public inspection during normal business hours. During the public comment period, a complete project file is available at the appropriate agency office. All draft/proposed/final permits and the statement of basis are available on the FDEP website, which is updated daily. In addition, the website also contains reporting forms, rules, statutes, guidance documents, and contact information. To ensure that the public is aware of the public participation process, FDEP has made the Intent to Issue and Public Notice documents readily available to the public. FDEP has permitting staff available in each office to answer questions from the public; however, no formalized training on public participation, beyond what has been offered by EPA, is offered to the public. Generally, FDEP has been able to respond to requests for permit information received during the public comment period in two to three days and as such very rarely extends the public comment period. The only time FDEP has extended the public comment period was during the Florida Power and Light (FPL) Riviera title V renewal.

FDEP notifies affected states of draft permits by verbally contacting them upon posting each permit on their website. FDEP is in the process of converting their notification process to an electronic method. FDEP does not currently notify Tribes when draft title V permits are open for comment. To date, the FDEP has not received comments from any affected states or Tribes.

E. Permit Issuance/ Revision/ Renewal

One hundred percent (100%) of FDEP's initial title V permits have been issued. The FDEP has, on average, taken:

1. 180 days to process a significant permit revision
2. 120 days to process a minor revision
3. 30 days to process an administrative revision

FDEP does note that on occasion they have exceeded the part 70 time frames for permit issuance (18 months for significant revisions, 90 days for minor permit revisions and 60 days for

administrative revisions). The main cause of these delays is certain requirements listed in Florida's Administrative Procedures Act. In order to streamline the issuance of these revisions, FDEP has developed formats for permit revisions in which changes are specifically identified. In addition, FDEP utilizes the Air Resource Management System (ARMS) database to track all permit revisions to completion, as they move through the system. FDEP has developed a guidance document, the PAT, currently used by permit writers, consultants, and permittees to assist in evaluating whether a proposed revision qualifies as an administrative amendment, off-permit change, significant or minor permit revision, or whether it requires that the permit be reopened.

FDEP is currently in the process of issuing title V permit renewals. They have established a schedule for planning purposes and each permit is processed under a time line to ensure that the renewals are issued timely. Overall, FDEP believes that with its experienced staff and training plan, it has crested the learning curve for title V and most of its initial problems have been solved. In addition, with the exception of processing CAM plans, the renewal process has been much faster. The majority of the renewal applications submitted have been timely and complete. At the time of the program review, the FDEP had received a total of 92 renewal applications. Of these 92 submittals, 69 have been deemed complete.

F. Compliance

Florida requires immediate notification to EPA for any deviation from any permit condition due to breakdown or destruction of equipment. Immediate means notification the same day during normal working hours or the next business day (no holidays or weekends) for "after work" events. Although FDEP does allow for some deviations to be reported by telephone, they must be followed up with a written report when requested to do so by the compliance authority. Florida rules don't appear to specify whether notification must be in writing or verbal. The rules do require that notification include a description of the cause of non-compliance, the period of non-compliance, the expected time to return to compliance, and the corrective and preventative actions being taken, etc. EPA was informed this means an immediate phone call with a follow-up letter providing the required details. The follow-up letter should be mailed the same day, but no later than the following day. A responsible party must certify all deviation reports. These certifications must be received at the time of submittal or the report is not valid. The FDEP defines deviation as any variation from any permit condition.

G. Resources and Internal Management Support

FDEP's current title V fee rate is \$25 per ton of pollutant. Their title V expenses are tracked using a cost accumulator system and their title V fee revenue is tracked by their finance and accounting (F&A) department. F&A tracks and logs all fees received, which are then verified against the fee forms received by the Bureau of Air Regulation.

FDEP currently employs 32 full-time equivalent (FTE) permit writers throughout the State. This number includes 8 FTEs in the Tallahassee office and 12 FTEs in each of the district and local offices. These permit writers worked full time on the initial round of title V permits, but now

have added additional duties that include NSR permitting as well as monitoring and enforcement activities. In order to accurately track the time allocated to title V activities, FDEP utilizes time accounting modules.

FDEP has recently experienced a very low turnover rate. Part of this is due to the use of best management practices to retain their employees. FDEP salary structure is designed to allow them to offer competitive salaries to retain employees. FDEP provides many opportunities for staff to obtain key training throughout the year. These training activities include courses provided by EPA, training provided at their annual air meeting, and their annual permit writers' workshop. FDEP strongly believes that EPA can best assist them in their training efforts by continuing to send EPA staff to the district and local offices to provide training and for EPA to provide training to industry in Florida.

FDEP utilizes weekly and monthly reports to keep management updated on title V permit issuance and FDEP believes they are adequately prepared to handle the issuance of permit renewals in a timely manner. FDEP is looking at ways to streamline other workload efforts to reduce time spent on issues not pertaining to title V permitting.

Florida does not currently have environmental justice (EJ) legislation, policy or general guidance which would help to direct their permitting efforts. Pat Comer and Scott Sheplak are the FDEP coordinators for EJ related activities. FDEP permit writers, who are able to attend the annual EPA/State/Local Permitting Meetings, do receive some EJ training. During the process of writing NSR permits, FDEP permit writers have access to EJ maps generated by EPA; however, no screening is conducted for EJ issues when reviewing an initial or renewal title V permit application.

H. Districts and Locals Interviews

In addition to the title V interview conducted with the Tallahassee office on March 31, 2004, EPA conducted interviews with several district and local offices in State of Florida. Although the Tallahassee office is responsible for the implementation of the title V program in the State, the district and local air offices are also responsible for writing title V permits. The purpose of the interviews was to obtain a more complete picture of the title V permitting process in Florida. EPA spoke to the following people in the district and local offices.

Districts:

Northeast - Rita Felton & Rick Banks

Northwest - Sandra Veazey & Kevin White

Central - Len Kozlov, Alan Zahm & John Turner

Southwest - Jerry Kissel & Jason Waters

Locals:

Broward Co. - Clifton Bittle, Daniela Banu & Sari Gairam

Hillsborough Co. - Alice Harmon & Sterling Woodard

Duval Co. - Richard Robinson, Jerry Woosley, Ron Robertson & Wayne Tutt

The interviews were scheduled for an hour each and three general questions were asked along with an inquiry about the districts and locals general impressions about the title V program. Detailed below are the questions and the responses given by the participants.

Question 1: Describe the process that you follow to issue title V permits.

Without exception, all the offices interviewed described the same method for processing title V permits. The offices receive the permit applications, either electronically or by mail, prepare a draft permit, and forward the draft permit on to the Tallahassee office for posting on the internet.

Permits are drafted based on the permit formats prepared by Tallahassee, which is the method employed to ensure consistent permit writing by all the offices. At the same time, the draft permit and the public notice are sent to the applicant. The applicants are responsible for publication of the public notice. Once the public comment period expires, any comments received are addressed and a proposed permit determination is forwarded to Tallahassee for posting on the internet. The final permits are issued 55 days after EPA is notified of a proposed permit, assuming there is no objection filed by EPA. At each step in the process (draft, proposed, and final), once FDEP posts the documents on the internet, an email notification is sent to EPA.

During the initial round of permitting, the districts and local offices sent pre-draft versions of the permits to Tallahassee for review. This measure proved to be very useful in providing a quick resolution of any issues and helped maintain permit quality. The State is now in its third year of permit re-issuance and has discontinued this practice. However, all the offices were very complimentary of the working relationship that exists between Tallahassee and the various district and local offices. Additionally, FDEP continues to update the permit formats for use by all permit writers.

Question 2: Describe your staffing and funding status.

Except for one of the local program offices, everyone indicated that they had adequate staff for permitting activities. However, the local offices, who receive funding for title V permitting activities via a contract with Department of Air Resources Management (DARM), indicated that the funding is becoming less sufficient than what they had originally envisioned and that they have been forced to look for other sources of funding within their offices. Title V expenses are tracked uniformly throughout the district and local offices using time sheets.

As a rebuttal to the local programs comments on funding, FDEP submitted the following information that shows contract money has been left unspent at the end of each contract period.

Contract Period	Unspent funds at the end of contract period
1998 - 1999	\$ 345,135.00
1999 - 2000	\$ 326,453.00
2000 - 2001	\$ 245,722.00

2001 – 2002	\$ 145,021.00
2002 – 2003	\$ 43,018.00

Question 3: Describe your public participation process.

For all district and local offices, the applicant is responsible for the publication of the notices for title V draft permits. All the district and local offices interviewed develop a project specific list of interested persons to whom materials relevant to the action will be mailed. None of the offices maintain a semi-permanent list of parties interested in air permitting actions in general. Overall, public participation for title V permits has been low.

General Impressions on the Title V Program/Feedback for EPA

All the persons interviewed were very complementary of their working relationship with the Tallahassee office. They believe that the Tallahassee office is helpful and responsive whenever the offices request assistance. Additionally, they think that the standardized permit formats, and other products, such as the PAT, have been very useful in the implementation of the title V program.

Regarding EPA's participation in the State's activities, they stated the importance of having had the same title V contacts over the years, which has provided a consistent approach to the program implementation and hoped for this relationship to continue well into the future. Also, they were very complimentary of the assistance provided to them by David McNeal (Monitoring & Technical Support Section) and Lee Page (Air Toxics Assessment and Implementation Section) over the years. One significant concern that was expressed is EPA's tendency to rely on guidance documents in lieu of conducting rulemaking. Unfortunately, State rules preclude them from relying on guidance for implementation of the federal regulations.

The districts and locals requested that EPA discuss the following items with the Tallahassee office: 1) changes to Florida's permit modification rules; 2) content of the statement of basis; and 3) the district and local participation in EPA's annual permits meeting. EPA made a commitment to research the statement of basis issue and the potential changes that can be made to the State's permit modification rules. Additionally, EPA believes it is important for all offices involved in either Title V or NSR permitting to participate in our annual permitting meetings. This meeting provides a valuable opportunity for EPA and all permitting authorities to interact and discuss issues essential to the successful implementation of the air permitting programs in Region 4.

3. Suggested Improvements

1. According to 40 CFR Part 70.7(h), Florida must include information in their public notices regarding the opportunity for the public to request a public hearing. Florida is not currently meeting this federal requirement and must correct this as soon as possible.

Currently FDEP does accept comments electronically. To better assist the public in submitting electronic comments, EPA recommends FDEP include an email address in the public notice to encourage the public to submit comments electronically. In addition, FDEP could include in the public notice both their website address and EPA Region 4's website address, which contains information on the deadlines for submitting title V petitions.

- Since the program evaluation, FDEP has revised its public notice language to explicitly indicate that the public may request a public hearing. FDEP has also revised its public notice to include EPA Region 4's website, as well as an email address for submitting public comments to FDEP.
2. Florida State rule 62.2132.410(2) restricts the use of off permit changes, which denies sources the operational flexibility intended by the statute and places it in conflict with federal rule 502(b)(10). Florida State rule 62.2132.410(2) must be amended to include this flexibility.
- As a rebuttal to EPA's assertion that the Florida State rule 62.2132.410(2) is in conflict with federal rule 502(b)(10) and must be amended, FDEP has requested specific examples of how their rule conflicts with 502(b)(10). EPA is in the process of providing these examples to FDEP.

2. Permit Reviews

A. Permit and Monitoring Files

EPA reviewed the contents of 10 title V permit files and found that, in general, all of the required components of the official file records were present. The singular exception was that three of the ten permit files did not have the proof of publication of the public notice.

B. Suggested Improvements

FDEP must improve its efforts to ensure that all of the administrative components are contained within the official permit record files. Specifically, FDEP must ensure that the proof of publication for all public notices is placed in the files.

- FDEP has agreed to remind all permit engineers of this requirement.

Florida New Source Review (NSR) Program Review

On March 31, 2004, the Region 4 Office of the U.S. EPA conducted a review of the FDEP NSR permit program. An exit briefing, including NSR items, was conducted on April 1, 2004. The NSR program review consisted of administering a questionnaire developed for EPA's national

NSR program review project. Region 4 has reviewed all of FDEP's major NSR permits in recent years, therefore no major NSR permits were evaluated as part of the on-site review.

The primary EPA staff person conducting the review was Jim Little from Region 4's Air Permits Section. FDEP's primary participants were from FDEP's Division of Air Resource Management and consisted of Al Linero, Jim Pennington, Jeff Koerner, and Cindy Phillips. Trina Vielhauer, Chief of the Bureau of Air Regulation, was present during the exit briefing at the end of the on-site review.

FDEP has a SIP-approved NSR program with its own NSR rules, with one exception. The permitting of large electric utility steam generating units subject to Florida's Electric Power Plant Siting Act is done under a delegated program and not a SIP-approved program. FDEP, therefore, has authority to issue both major and minor NSR permits. Because there are no nonattainment areas in Florida, the only applicable major NSR permitting regulations are the regulations for prevention of significant deterioration (PSD).

FDEP's organizational structure for air permitting is comprised of the central office in Tallahassee and offices in six districts. All major NSR permits are processed in the central office. Minor NSR permits are processed in the district offices.

The headings in the following report duplicate the headings in the NSR program review questionnaire administered during the visit. Sentences in italics represent items that EPA believes should be given further consideration.

As an appreciated aid to EPA at the time of the on-site review, FDEP provided a copy of the program review questionnaire annotated with FDEP's answers. For many questionnaire items, the answers provided by FDEP are more detailed than indicated in the summary discussion below. The answered questionnaire from FDEP will be on file at EPA Region 4 for further review if needed.

1. Common Program Requirements (PSD and Nonattainment NSR)

A. Netting

FDEP follows appropriate netting procedures. FDEP SIP-approved rules specify a five-year contemporaneous period to assess net emissions changes, dating back from the receipt of a complete application. FDEP is cognizant of the "relied on" provision of PSD rules. When a new application is received, FDEP conducts a complete file search to identify any contemporaneous projects. If an emissions decrease sufficient to avoid PSD review is clearly integral to a proposed modification, FDEP believes that it is not necessary to conduct a complete contemporaneous analysis. Netting assessments are generally reviewed by the FDEP central office and not by the district offices.

B. Routine Maintenance, Repair and Replacement (RMRR)

FDEP has a formal process by which a source owner can file for a "Declaratory Statement" from FDEP on matters such as an RMRR question. This process is little used, however. FDEP generally follows a semi-formal approach by advising a source owner on measures required to obtain concurrence on an RMRR question. FDEP can provide a written response of concurrence if the source owner insists, or could even issue a construction permit for a proposed change with acknowledgment that the change constitutes RMRR. FDEP has provided about 20 semi-formal RMRR opinions in the last five years. In one cited example, FDEP deemed a boiler change to be routine based on the nature, extent, purpose, frequency, and cost of the change, and then issued a minor source construction permit to ensure that the change did not result in an increase in boiler capacity. Regarding the cost factor in an RMRR assessment, FDEP takes into account the source owner's estimate of cost for the proposed change, previous costs incurred for similar units, average annual repair/replacement costs for the unit, whether costs are ascribed to the facility's capital or operating budget, and the cost of the change in comparison to the total replacement cost of the unit.

C. Synthetic Minor Limits

FDEP can develop a list of synthetic minor sources using codes from FDEP's detailed Air Resources Management System (ARMS) database. Synthetic minor permits contain enforceable limits on operating rate, hours of operation, and emissions, and include a provision explaining that a relaxation in an enforceable limit will trigger PSD review as though construction had never commenced.

D. Pollution Control Projects (PCP) Exclusion

State administrative requirements do not allow state regulatory agencies to use federal guidance in the absence of state rules implementing the guidance. Therefore, EPA's 1994 policy guidance on PCP exclusions can not be used by FDEP for all emission source categories on a case-by-case basis. Rather, FDEP's rules specify use of the PCP exclusion only for electric utility steam generating units in accordance with EPA's WEPCO rule, for certain pulp and paper mill projects, and for certain municipal solid waste landfill projects. FDEP has reviewed PCP exclusion projects for several pulp and paper mill projects and for a few landfill projects. FDEP would allow use of voluntary and enforceable emissions reductions from a PCP project for use in a later netting analysis. FDEP would also require that collateral emissions increases from a PCP project be considered in future netting.

- EPA notes that regulatory provisions on use of PCP project reductions as creditable for netting purposes are vague. EPA will seek to provide more definite policy on use of PCP reductions in netting analyses.

E. Fugitive Emissions

FDEP's rule definition of fugitive emissions is the same as the federal definition. Fugitive emissions are considered in NSR applicability assessments for both new sources and modifications of existing sources, but only if the source is in one of the listed source categories. For reductions in fugitive emissions to be creditable in a netting analysis, they would have to be specific and quantifiable. Quantifiable means that the parameters used in a fugitives emissions calculation are quantifiable.

F. Modeling

FDEP generally follows the modeling procedures in 40 CFR 51, Appendix W, and consults with EPA Region 4 if in doubt.

Modeling typically is not conducted for minor source permits. However, modeling may be required for minor source projects in some instances. For example, if a project is near an area with known air quality concerns including PSD increment consumption concerns.

FDEP does not insist on applicants submitting a modeling protocol in advance of submitting a permit application, but does encourage discussion of modeling procedures prior to application submittal. If FDEP considers the modeling submitted with an application to be inadequate, the application is deemed incomplete.

If requested by the applicant, FDEP will provide an emissions inventory to be considered for use in a modeling evaluation. If an applicant wishes to delete any sources from the inventory, the applicant has the responsibility for justifying the deletion. The inventory provided by FDEP for short-term modeling purposes consists of maximum allowable emissions.

If modeling demonstrates a violation of an ambient standard or a PSD increment but the applicant's units are not a significant contributor to the violation, FDEP will grant a permit for the applicant's project. FDEP will then follow up with sources having a significant contribution to seek resolution of the modeled violation.

G. Stationary Source Determinations

Rather than define the term "stationary source," FDEP's rules define the terms "facility," "minor facility," "major facility," "emissions unit," etc. When assessing whether two or more entities should be considered part of the same facility for permitting purposes, FDEP relies primarily on the plain meaning of the words contiguous, adjacent, and common control. The size and interdependence of geographically separated entities might affect the determination of whether the entities are close enough to be considered part of the same facility.

H. Debottlenecking and Increased Utilization

FDEP takes into account debottlenecking when assessing emissions increases for PSD applicability purposes. FDEP currently follows EPA's policy of not requiring a best available control technology (BACT) for debottlenecked units that are themselves not being changed as part of a modification project. Debottlenecking reviews done by district offices can be checked during the biennial performance reviews of district permitting programs conducted by the central FDEP office.

I. Relaxation of Limits Taken to Avoid Major NSR

FDEP understands the concept of permit changes that might constitute a relaxation triggering PSD review. Permits contain restrictions clearly indicating potential emissions limits taken to avoid PSD review. Recent permits contain FDEP's regulatory citation concerning relaxations and sometimes contain a note explaining the reason for permit restrictions.

J. Circumvention/Aggregation Issues

To assess possible circumvention, FDEP closely examines any projects at the same facility that are less than two years apart.

2. Prevention of Significant Deterioration (PSD)

A. Program Benefits Quantification

FDEP believes that the PSD program has produced air quality benefits.

B. Best Available Control Technology (BACT)

FDEP requires use of the top-down procedure. To identify control options, applicants are asked to search available references such as the Internet to provide information beyond what is available in the RACT/BACT/LAER Clearinghouse. In addition, FDEP is one of the leading agencies in Region 4 in terms of researching available control technologies including technologies in use outside the United States. For example, FDEP's research on cement plant emission controls in the U.S. and in Europe has been exemplary.

To assess baseline emissions for cost effectiveness calculations, FDEP uses uncontrolled potential emissions for new units and current actual emissions for existing units being modified. Emission standards (such as federal new source performance standards) are not necessarily equated to baseline emissions. For example, the inherent design capability of new combustion turbines using dry low NO_x technology is used to assess baseline NO_x emissions rather than the outdated new source performance standards for such units.

FDEP establishes compliance averaging times for BACT emissions limits on a case-by-case basis. When a PSD increment or national ambient air quality standard (NAAQS) is at issue, the averaging time associated with the increment or NAAQS may determine the averaging period for the BACT limit. FDEP may also give consideration to likely variations in emissions rate due to operating variables such as load changes, type of add-on control equipment, low load conditions, etc. Another important consideration when establishing compliance averaging times is whether compliance will be determined by periodic stack tests or by continuous monitoring.

FDEP generally advocates that applicants follow EPA procedures for BACT cost evaluations. EPA is given the opportunity of reviewing all cost evaluations whatever the method used to develop cost estimates. Total cost effectiveness is given more weight in a BACT cost evaluation than incremental cost effectiveness. If the need is indicated by an initial review of an applicant's BACT cost evaluation, FDEP may perform (and has performed) its own independent cost evaluation.

FDEP requires a BACT assessment for all new and modified units that emit a pollutant subject to PSD review. For units with minimal emissions of a subject pollutant, FDEP would not require the applicant to provide the depth of review needed for units with greater emissions.

Regarding consideration of corollary toxic/hazardous air pollutants in a BACT evaluation, FDEP is aware of EPA guidance resulting from the North County Resource Recovery Remand. However, FDEP has limited statutory authority to use EPA guidance unless such guidance becomes part of federal regulations. Nevertheless, FDEP permit engineers would certainly take note of any non-regulated pollutants affected by BACT options.

BACT training includes seminars, EPA self-instructional courses, and on-the-job training under the supervision of an experienced Professional Engineer.

Information on the basis of BACT determinations is provided to the public at any public meetings on specific projects and at other times when requested.

C. Class I Area Protection for PSD Sources

FDEP consults with the federal land managers (FLMs) of PSD Class I areas to determine the Class I area impact assessment requirements for a specific project. The FLMs specify the air quality related values to be considered for a specific Class I area.

D. Additional Impacts - Soils, Vegetation, Visibility, Growth

FDEP generally leaves it up to the applicant to decide how to address additional impacts in a PSD permit application. A visibility impact assessment is generally carried out only for PSD Class I areas.

E. Preconstruction Monitoring

FDEP allows use of ambient air quality data from state-operated monitors in lieu of project-specific preconstruction ambient monitoring. FDEP believes that Florida's geographic layout and terrain features are such that data from state-operated monitors are representative of project site locations throughout Florida. Post-construction monitoring has been required for one project (American Suwannee Cement) in recent years.

F. Increment Tracking Procedures

Baseline dates are the same for the entire state. Information for increment tracking can be obtained from FDEP's ARMS database. Allowable emissions are generally used for increment consumption assessment purposes.

G. Endangered Species Act (ESA)

EPA believes that ESA review requirements are technically applicable to permits issued under Florida's Electric Power Plant Siting Act (PPSA) - permits that EPA considers to be issued under delegated authority and not SIP-approved authority. EPA recognizes that the environmental assessment required for PPSA projects contains elements similar in nature to an ESA review, but both EPA and FDEP are possibly subject to challenge for not requiring and conducting assessments that meet all ESA requirements. This vulnerability would be eliminated if agreement can be reached on removing PPSA projects from delegated status.

3. Nonattainment NSR

There are currently no nonattainment areas in Florida nor any projected. Therefore, nonattainment NSR requirements do not apply.

4. Minor NSR Programs

Minor NSR permitting is primarily the responsibility of the district offices. The FDEP central office performs periodic audits of the district permitting programs. EPA did not contact any district offices for information on minor NSR permitting procedures.

A. NAAQS/Increment Protection

Not every minor NSR project requires modeling. Modeling is required if reason exists to indicate a project could have adverse impacts. The application form for minor NSR permits requires the applicant to identify whether the project will consume or expand PSD increments.

B. Control Requirements

Sulfur dioxide and particulate matter emissions from small boilers (less than 250 MMBtu/hr heat input) are subject to "State BACT" requirements. In addition, State emissions standards exist for several industrial categories.

C. Tracking Synthetic Minor NSR Permits

The reviewing authority responsible for minor NSR permits in a particular geographic area keeps permitting and compliance records for each synthetic minor source. Each permitted facility is entered into the FDEP ARMS database and updated when appropriate. The database can be queried to produce a list of synthetic minor sources.

FDEP's permit application form provides two sections to identify requirements being avoided (PSD, title V, NESHAP, etc.). The facility section identifies "emission caps" and the emissions unit section identifies "emission standards" that can be taken to avoid such programs. The basis of the limitation must be specified.

5. Public Participation

A. Public Notification

FDEP provides public notice for most types of construction permitting actions including all PSD permits. Notices are published in a newspaper of general circulation. Actions subject to the Florida Electric Power Plant Siting Act are also noticed in the *Florida Administrative Weekly*. For certain controversial projects, FDEP develops mailing lists. The citizens, officials, and groups showing the greatest interest in a given project will be placed on mailing lists for further permitting actions affecting the same project or same geographic area. The public comment period is extended if a public meeting is to be held.

FDEP usually holds a public meeting for a project if a meeting is requested in writing. FDEP will schedule a meeting in advance of a request if the likelihood of a request is high. Public meeting notices are posted in the *Florida Administrative Weekly* and in a newspaper of general circulation. FDEP also issues a press release to announce public meetings. At public meetings, FDEP makes presentations to explain permitting decisions and does not attend the meetings just to listen to comments from the public.

FDEP's Internet website contains a section for PSD permits that highlights recent or representative PSD permitting actions. Specific permits can be searched for and viewed in their entirety. Not all past PSD permits are available yet.

B. Environmental Justice (EJ)

EJ considerations for Florida projects are discussed in the title V program review section elsewhere in this report.

6. Program Staffing and Training Issues

FDEP has 14 staff personnel in its central office who spend at least part of their time in conducting NSR applicability assessments, reviewing NSR permit applications, conducting ambient impact assessments, drafting NSR permit conditions, making control technology determinations, and evaluating possible NSR violations. Statewide (including district offices), approximately 50 people have NSR responsibilities to some degree. Personnel newly assigned to major NSR permitting have experience in minor source permitting and title V permitting, undergo training including self-instructional EPA courses and outside courses, and work under the supervision of a Professional Engineer who provides oversight and mentoring.

7. General NSR Program Issues

FDEP is required by the Florida legislature to operate on the basis of published rules rather than on the basis of policies. However, FDEP values EPA policies and guidance, and most FDEP decisions are congruent with the recommendations of EPA policies.

FDEP evaluates emission factors taking into account how long ago the factors were developed and the accuracy rating of the factors. Site-specific data are preferred over generic factors. FDEP is aware of the limitations of AP-42 factors.

During calendar year 2003, FDEP issued 7 PSD construction permits (an unusually small annual number for Florida). During the same period, FDEP issued 350 non-major permits.

PM₁₀ condensible emissions have been included for some projects but not for others. FDEP rules define particulate matter by test method, and the method generally specified is for filterable particles. If PM₁₀ condensibles are specifically listed in a permit, an appropriate test method is specified. More permits than in the past include condensibles.

8. Effective Construction Permits

Based on EPA Region 4's experience in reviewing FDEP's PSD permits, FDEP creates very effective construction permits with appropriate permit conditions. FDEP believes that the appropriate time for specifying detailed testing and monitoring requirements is when the PSD permit is issued rather than waiting for the time of title V permit issuance.

9. Suggested Improvements

- EPA recommends that FDEP submit specific examples of decisions that demonstrate that a contemporaneous netting analysis was unnecessary. Such examples would be helpful to confirm that "project netting" is not being used to avoid contemporaneous assessments inappropriately and that EPA's two-step netting procedure is being followed.
- EPA recommends that PM condensibles be included routinely in future NSR applicability and compliance determinations for existing NSR permits.

Conclusion

At the conclusion of the onsite portion of the Title V and NSR program reviews, Region 4 personnel met with key FDEP officials to conduct an exit interview. During this exit interview Region 4 shared with key FDEP staff the findings of the evaluation. Overall, EPA believes that FDEP is operating both the title V and NSR programs at a high level of proficiency and looks forward to working with the FDEP to address the areas needing improvement in the future. In addition, Region 4 queried FDEP about ways to possibly improve the program reviews. Personnel in attendance from EPA Region 4 were Randy Terry, James Little, Kay Prince, Gregg Worley, Katy Forney, and Gracy Danois. FDEP officials in attendance included Jim Pennington, Al Linero, Scott Sheplak and Trina Vielhauer.